

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

To: The Commission

REPLY COMMENTS OF
LINCOLN BROADCASTING COMPANY

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March 31, 1997

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REPLY COMMENTS OF LINCOLN BROADCASTING COMPANY

LINCOLN BROADCASTING COMPANY ("Lincoln"), licensee of commercial, independent television broadcast station KTSF(TV), San Francisco, California, by its attorneys and pursuant to Section 1.415(c) of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415(c) (1995), hereby submits these brief reply comments on two limited but important points in response to selected opening comments of other parties.

I. OPENING COMMENTS SHOW BROAD SUPPORT FOR THE COMMISSION'S PROPOSAL TO EXEMPT FROM CAPTIONING FOREIGN LANGUAGE PROGRAMMING USING NON-LATIN BASED ALPHABETS

In opening comments filed February 28, 1997, Lincoln provided support from its own experience for the Commission's tentative conclusion "that, at a minimum, an exemption is appropriate for programming that is in languages which are not written using a Latin-based alphabet." Lincoln Comments at 2 (quoting *Notice* at 33 ¶ 72).^{1/} Most of

^{1/} *Closed Captioning and Video Description of Video Programming*, FCC 97-4, released January 17, 1997 (*Notice of Proposed Rulemaking* in MM Docket No. 95-176) ("*Notice*").

Lincoln's programming is in multiple Asian and other non-Latin-based languages not yet amenable to captioning. Consequently, though Lincoln seeks to do all that it can to maximize the accessibility of its programming to hearing-disabled viewers, at least for the present the proposed exemption is necessary. *Id.* at 5.

This view is widely shared by other opening commenters. In fact, it appears that none of the opening comments provides any support for departing from the Commission's inclination to exempt.^{2/} It is particularly noteworthy that some advocates of the narrowest possible exemptions support the exemption of non-Latin based programming, at least until new technology becomes available. See, e.g., Comments of the League for the Hard of Hearing at 7; Comments of the National Association of the Deaf at 12; Comments of the WGBH Educational Foundation at 9. The few opening commenters opposed to exempting any class of programming^{3/} do not provide support for requiring that non-Latin based programs be captioned now, nor do they specifically address how the obstacles might be overcome feasibly, or without jeopardizing the availability of the programming to all viewers, if no exemption were made. Lincoln supports revisiting the exemption from mandatory captioning of non-Latin based foreign language programming in a rulemaking when it appears that the technology and other factors have developed sufficiently to permit it.^{4/}

^{2/} Lincoln has not reviewed every set of opening comments filed, but has reviewed those most likely to address the issues addressed in Lincoln's opening comments.

^{3/} See, e.g., Joint Comments of Californians for Television Access and Self Help for Hard of Hearing People - California at 5; Comments of the Coalition of Protection and Advocacy Systems at 6.

^{4/} Technical feasibility is an important, but not the sole, obstacle; as noted in Lincoln's
(continued...)

II. THE COMMISSION SHOULD ALSO EXEMPT FROM CAPTIONING ALL FOREIGN LANGUAGE PROGRAMMING PRODUCED OUTSIDE THE UNITED STATES

Lincoln supports the comments of such parties as Grupo Televisa, S.A., who advocate exempting all foreign language programming produced outside the U.S. from captioning requirements.^{5/} As noted in Lincoln's opening comments, approximately 36 percent of Lincoln's weekly schedule consists of material obtained from foreign sources, much of it news material aired on a time-sensitive basis. *Id.* at 4. Any captions contained in such programming (or in any other material) are, of course, broadcast by KTSF, but captioning requirements generally do not apply to such programming in its country of origin. To the extent that such material is not delivered to Lincoln with captions, the time constraints of news operations and Lincoln's limited resources as a sole independent station make it impossible for Lincoln to add captioning itself prior to broadcast.

In opening comments Lincoln suggested that an exemption for such foreign-source, foreign language programming is warranted because the relative economic interests of overseas producers and U.S. importers would cause the burdens of captioning this category of programming to fall on the entities, like Lincoln, who import the programs for broadcast in the U.S. *Id.* at 7. Because these entities possess limited resources, Lincoln observed, a requirement that all such programming be captioned would likely have the effect of driving the programming out of the market, diserving the

4/(...continued)

opening comments, even if technically feasible, captioning such programming entails a number of unique economic and linguistic problems which also affect the appropriateness of an exemption under Section 713(d) of the Communications Act.

5/ Comments of Grupo Televisa, S.A. at 3-7.

public interest. *Id.* at 7-8.^{6/} Grupo Televisa and other opening commenters echo and amplify this point. In addition, Grupo Televisa makes the useful point that, even if they had sufficient incentive to do so, foreign programming producers often lack the equipment, technical expertise, or financial resources to caption their programming.^{7/}

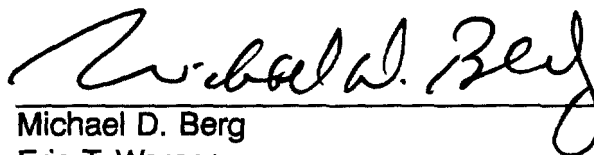
III. CONCLUSION

FOR THE FOREGOING REASONS, Lincoln urges the Commission to adopt closed captioning rules which expressly exempt all foreign-language programming which is in languages that are not written in Latin-based characters, and foreign-language programming obtained from producers outside the United States.

Respectfully submitted,

LINCOLN BROADCASTING COMPANY

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Date: March 31, 1997

Attachment (Certificate of Service)

^{6/} As Grupo Televisa notes (at 7), U.S. distributors would either have to (1) incur the costs of captioning the programming themselves or (2) pay the full costs for the producer to caption the programming because the producer may not be able to spread the captioning cost among distributors in other countries.

^{7/} *Id.* at 4-6.

CERTIFICATE OF SERVICE

I, PJ Thiessen, a legal secretary with the law firm of Verner, Lipfert, Bernhard, McPherson & Hand, hereby certify that on this 31st day of March, 1997, I sent courtesy copies of the foregoing "Reply Comments of Lincoln Broadcasting Company" in MM Docket No. 95-176, via first class United States Mail, postage prepaid, to each the following:

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